motor car. After a conversation between accused and the four Malays the former took them in his car to their place of destination. Later he (first witness) made a report at the Lenggong Police Station. The second witness, a police corporal, said that he received a telephone message from Lenggong asking him to stop a certain car plying for hire. As a result he came to Kati and stopped the said car and found there were four Malay passengers in it.

At the conclusion of the case for the prosecution the Magistrate, Lenggong, found that there was no case for the accused to answer and acquitted and discharged him.

The Public Prosecutor lodged an appeal against this finding mainly on the ground that the Magistrate ignored the provisions of section 113 (2) (b) of the Road Traffic Enactment, 1937, and that the Magistrate should have called on the defence. The appeal was allowed by the Judge who reversed the order of acquittal in the Summons case and ordered that the case be sent for a new trial before another Magistrate.

T. V. A. Brodie, Assistant Legal Adviser, for Public Prosecutor.

Respondent in person.

Murray-Aynsley, J.—In this case the Magistrate seems to have overlooked the presumptions created by Sec. 113 (2) of Enactment 17 of 1937. By reason of that Enactment there was evidence against the Respondent to be considered—indeed the principal fact alleged, that there were passengers in the car, does not appear to have been in issue. In these circumstances the defence should have been called on.

There must be a new trial before another Magistrate.

New trial ordered.

[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

July 20, 1939.

TEH BINTI CHIK

v.

KELSOM BINTI HAJI ABAS.

(KUANTAN CIVIL APPEAL No. 1 of 1939)

Probate and Administration Enactment, 1920, s. 179—joint cultivation of husband's property by husband and wife—death of husband—distribution.

KHA (f) and ABC (m) were married at Beserah in Pahang in or about 1928. Prior to the marriage ABC was possessed of three pieces of land two of which were at that time practically uncultivated.

Husband and wife cultivated and planted these two pieces of land by their joint labour.

On the death of ABC, KHA claimed that before the inheritance was distributed a share in each of these pieces should be allotted to her as "harta sepencharian."

Held, on appeal, that since the property had been acquired prior to marriage it could not be "harta sepencharian" but that either spouse could claim "upah" for work done on the other's property.

APPEAL from decision of Collector of Land Revenue in Distribution.

Appellant appeared by her Attorney Omar bin Awang.

Respondent in person.

Cur. Adv. Vult.

Raja Musa, Ag. J.—I order that this matter be referred back to a different Collector for retrial.

"Harta Sepencharian" is only applicable to property acquired during marriage and not to property acquired before marriage.

Where property has been acquired before marriage and either spouse has put in money or labour to that property Harta Sepencharian does not apply but either spouse is entitled to claim what is known as "Upah" which is remuneration for work done.

This matter is remitted back to the Collector for him to ascertain whether or not the Respondent is entitled to claim "Upah" and if so how much.

No costs of the appeal.

Case remitted back.

(REVISIONAL CRIMINAL JURISDICTION)

June 28, 1939.

POYSER, C.J.

RE MOHAMED MISKIN SON OF KADER BACHA.

(SABAK BERNAM CRIMINAL CASE No. 48 of 1939)

Penal Code, S. 431A—mischief—plea of guilty—conviction—ingredients of offence not explained to accused on pleading guilty—irregularity.

An accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department and was convicted and fined $25. At the time that the accused pleaded guilty the Magistrate did not explain to him the legal position with regard to the charge. On revision by the Supreme Court:—

Held, that when the accused pleaded guilty his statement was in effect an admission that he was responsible for the cutting of the cable and there was no indication in the statement that he intended to cut

the cable or knew he was likely to do so and that, accordingly, the conviction must be set aside.

CRIMINAL REVISION.

On the night of the 20th March 1939 M.M. anchored the Tongkang (sailing boat) of which he was captain near a cable belonging to the Posts and Telegraphs Department in the Bernam River. During the night the anchor dragged and as a result the cable was damaged.

He was charged before the Magistrate, Sabak Bernam, with committing mischief under section 431A of the Penal Code and in answer to the charge pleaded guilty. His plea of guilty was recorded by the Magistrate who convicted him and imposed a fine of $25.

The record reached the Legal Adviser in connection with civil proceedings* which the Posts and Telegraphs Department wished to institute in the matter. On the record being referred by the Legal Adviser to the Supreme Court for revision under Chapter XXXI of the Criminal Procedure Code the Chief Justice on the 28th June 1939 acting in revision set aside the conviction and ordered the fine of $25/- paid by the accused to be refunded.

Poyser, C.J.—This case was brought to my notice by the Deputy Public Prosecutor.

The accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department. The facts appear to be as follows. The accused anchored his boat near the cable in question, and during the night when the accused and his crew were asleep the anchor dragged and the cable was cut.

To establish a charge of mischief it must be proved that the accused intended to cause wrongful loss or damage or that he committed an act with the knowledge that he was likely to cause such loss or damage.

The legal position was not explained to the accused when he pleaded guilty to the charge, his statement was in effect an admission that he was responsible for the cutting of the cable but there was nothing in his statement to indicate that he intended to cut the cable or knew he was likely to do so.

Probably the accused's conduct was negligent, but negligence is not necessarily mischief, and although the accused might be held liable in civil proceedings for damages I do not think the facts disclosed justify a conviction under the Penal Code.

Acting in revision I set aside the conviction. The fine of $25/- paid by the accused will be refunded to him.

Conviction set aside.

*(The civil claim was afterwards settled.—(Ed. M.L.J.)

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

August 1, 1939.

PUBLIC PROSECUTOR v. NG FEE LEONG.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 57 of 1939]

Penal Code (Cap. 45), S. 71—cheating—accused found guilty on three charges—conviction on one—irregularity.

Where an accused person was found guilty on three charges of cheating by obtaining money by false pretences on three occasions and the Magistrate convicted him on the first charge only and acquitted him on the second and third charges on the ground that an accused should only be punished with one punishment for offences against the same person committed in the course of one transaction—

Held, that on each occasion he obtained money the accused committed a fresh offence and that he should have been convicted and sentenced on each of the charges.

MAGISTRATE'S CRIMINAL APPEAL.

The accused, a petition writer, cheated a woman by representing that he would get her land released from attachment and also stop distribution of property in which complainant had an interest. By these and other pretences he obtained different sums of money from her: $60 on 14th March 1939, $30 on the 18th March, and $20 on 31st March. In respect of these sums the accused was charged with three charges of cheating and was found guilty by the Magistrate, Tapah, who, however, convicted him on the first charge only; sentencing him to 1 month's R.I. on the first charge and acquitting him on the second and third charges, on the ground that under section 71 of the Penal Code an accused person should only be punished with 1 punishment for offences against the same person done in the course of one transaction.

Against this decision the Public Prosecutor appealed. The appeal was allowed by the Judge who ordered that convictions be entered on each of the three charges and altered the sentence to one of three months R.I. on each charge, these sentences to run concurrently.

T. V. A. Brodie, Assistant Legal Adviser, for Public Prosecutor.

Respondent absent.